

PTO/SB/04 (01-08)

Approved for use through 03/31/2008. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

P33305

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MAY 29 2008

First named inventor: MARQUESS, Foley Leigh Shaw; LAARVELD, Bernard; et al

Art Unit: 1634

Application No.: 10/803,713

Examiner: KAPUSHOC, Stephen Thomas

Filed: March 18, 2004

Title: SYSTEM AND METHODS FOR IMPROVING PRTEIN AND MILK PRODUCTION OF DAIRY HERDS

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

05/29/2008 PCHOMP 00000022 10803713

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1540.00 00

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity - fee \$ 1,540.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of a reply letter dated May 23, 2008 (identify type of reply):

has been filed previously on \_\_\_\_\_  
 is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_.  
 has been paid previously on \_\_\_\_\_.  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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T-636 R 016/019 F-031

MAY 29 2008

PTO/SB/64 (01-08)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

May 29, 2008

Date

\_\_\_\_\_  
Signature

27,278

Registration Number, if applicable

\_\_\_\_\_  
Paul Herbert

Typed or printed name

\_\_\_\_\_  
2 Bloor Street East, Suite 1800

Address

416-961-5000

Telephone Number

\_\_\_\_\_  
Toronto, Ontario M4W 3J5 Canada

Address

Enclosures:  Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: Statement in support of petition of Leigh Marquess dated May 6, 2008

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

May 29, 2008

Date

\_\_\_\_\_  
Signature

Paul Herbert

\_\_\_\_\_  
Typed or printed name of person signing certificate

29-MAY-2008 10:43AM FROM-Riches McKenzie & Herbert LLP

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T-636 P.018/019 F-031

05-MAR-2008 11:23 FROM-Riches McKenzie & Herbert LLP

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T-014 P.002

F-031

UNITED STATES PATENT AND TRADEMARK OFFICE

Statement in support of a petition under 35 U.S.C. 133 to reinstate U.S. patent application  
serial number 10/803,713.

Re: United States Patent Application  
Serial No. : 10/803713 Filing Date: March 18, 2004  
Agent's Ref. : P33305  
Title : Systems and Methods for Improving Protein and Milk  
Production of Dairy Herds

I, Leigh Marquess, a resident of the city of Saskatoon, province of Saskatchewan, Canada, do hereby make oath and state as follows.

1. I am one of the inventors of the invention recited in U.S. patent application serial number 10/803,713 and I am responsible for the prosecution of this United States patent application.
2. This statement is made in support of a petition to reinstate the prosecution of application serial number 10/803,713 which was abandoned by the failure to respond to the report from the examiner dated February 21, 2007 on or before the due date of August 21, 2007 and for no other purpose.
3. The delay in responding to the report from the examiner was unavoidable and unintentional and arose as a result of confusion with respect to the responsibility for prosecution of this patent application.
4. The responsibility for the prosecution of this application was originally undertaken by the licensee of the owner of this patent. The relationship between the inventors and the licensee was terminated and I assumed responsibility for the prosecution of this patent application. I appointed the law firm of Riches, McKenzie & Herbert LLP to assist me in the prosecution of this application.
5. I was advised that the examiner had issued a report on February 9, 2007 but it was addressed to the former firm responsible for prosecution of this application since the United States Patent Office had not recorded the revocation and appointment of agent.
6. I was advised that the examiner was contacted and advised that the revocation had not been recorded and that the office action should be cancelled and a new action issued. I have now been advised that a new action issued on February 21, 2007 but due to the confusion of the termination of the licensee, the matters

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29-MAY-2008 10:44AM FROM-Riches McKenzie & Herbert LLP

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T-636 P.019/019 F-031

05-MAR-2008 11:24 FROM-Riches McKenzie & Herbert LLP

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1-014 P.003/030

addressed in the action dated February 21, 2007 were inadvertently not addressed.

7. It was never my intention nor the intention of the inventors to abandon the prosecution of this application. The failure to respond to the report was unavoidable and due to confusion with respect to the termination of the relationship between the licensor and the licensee.
8. Promptly following the discovery of the issuance of the action, I contacted our agent and asked him to take the necessary steps to reinstate the prosecution of this application and I have proceeded as expeditiously as possible.
9. The entire delay in prosecuting this application was unavoidable and unintentional.

Sworn before me in the City

of Saskatoon, in the Province of

Saskatchewan, this

*May*  
day of March, 2008.

Leigh Marquess

*L. Marquess*  
A Notary Public

